

CLERK'S OFFICE U.S. DISTRICT COURT  
AT ABINGDON, VA  
FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ABINGDON

FEB 04 2022

Tony McKenna

Case No. 1:22CV00002

JULIA C. MIDDLEBURY  
BY: *[Signature]*  
DEPUTY CLERK

V.  
Commonwealth of Virginia  
The City of Bristol, Virginia  
Bristol Police Department,  
Ofc. Green, Bristol City Police  
Ofc. Erickson, Bristol City Police  
Ofc. Charles Thomas Jr Bristol Bristol City police  
Assistant Commonwealth's Attorney, Tim Boyer

Now comes Tony McKenna, Plaintiff on this day, pursuant to civil action for deprivation of rights, 42 U.S. Code 1983 civil action for deprivation of rights. Also pursuant to Virginia state laws, U.S. Code, the Constitution of the United States, Bill of rights at the 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup>, and 14<sup>th</sup> Amendments. 1st Amendment's "Right to Petition" is not limited to one branch of the government. This right effects all three branches. 4th Amendment "Searches and seizures inside a home without a warrant" in unlawful. 5<sup>th</sup> amendment deprived of life, liberty, or property, without due process of law. Officers acting under color of law means no due process and the 14<sup>th</sup> amendment "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States". Equal Protection refers to the idea that a governmental body may not deny people equal protection of its governing laws. The governing body state must treat an individual in the same manner as others in similar conditions and circumstances. State laws are listed to show officers did not afford me the same protections as others, "A Class of One" under the 14<sup>th</sup>.

I) The Parties to This Complaint  
A. The Plaintiff

Tony McKenna, non lawyer  
Resident Bristol City  
837 Portsmouth Ave Apt F-12  
Bristol VA 24201  
(Now 249 New Haven LN Apt205)  
Same location new address.

B. The Defendants

The Commonwealth of Virginia  
Bristol VA. City Police Department  
Bristol VA. Police Officer Erickson  
Bristol VA. Police Officer Green

Bristol VA. Police Officer Charles Thomas Jr

501 Scott St, Bristol VA

24201

City of Bristol

City Hall 300 lee street

Bristol VA 24201

Assistant Commonwealth's Attorney

for the City of Bristol, Tim Boyer

230 Piedmont 2<sup>nd</sup> floor

Bristol VA 24201

Commonwealth of Virginia

Attorney General

202 North Ninth Street

Richmond, VA 23219

And

Attorney General

204 Abingdon Pl,

Abingdon, VA 24211

### Basis for Jurisdiction

Civil action for deprivation of rights, 42 U.S. Code 1983 civil action for deprivation of rights. U.S. Code, the Constitution of the United States, Bill of rights at the 1<sup>st</sup> 4<sup>th</sup> 5<sup>th</sup> and 14<sup>th</sup> Amendments. And any and all that may apply.

### II Statement of Claim

Gross negligence and/or willful, wanton negligence. City of Bristol/Commonwealth of Virginia, failed to assure proper training of Police Officers and other city, county, state employees. And/or, violators simply chose to ignore training. Police officers and the Commonwealth's Attorney, as a unit, intentionally breaking laws under color of law to deny my constitutional protected rights. As a result causing me physical pains/damage and emotional injury, distress, anxiety and other damages. "Cause" shown in the body of this complaint. State law listed is to show that what they did, if done by anybody else, would be arrested. They need to understand that they cannot act like Nazi and that Citizens have rights that are NOT to be Violated in the name of policy. What they did is criminal in nature and used to deny my rights protected under state, and federal constitutions.

On June 6th 2021 Assistant Commonwealth's Attorney, Tim Boyer, ofc. Green, ofc. Erickson and ofc. Charles Thomas Jr, conspired against me in order to get me to surrender my constitutionally, protected rights. I was Trespassed upon, Threatened with a firearm, Assaulted, Battered, Abducted, searched without a warrant, and then Falsely Imprisoned. After interviewing me about a complaint by a neighbour, Three officers named above, came back to serve me with an emergency protective order, which I expressed my willingness to accept. They said they need a drivers license and social security number which I told them they could not have. We argued the law and they said they would comeback with a warrant. Instead of coming back with a warrant they told me they would arrest me for Obstruction of Justice. After I received, a copy a police report I find in it that while they did not get a warrant, they were advised by Tim Boyd, The Commonwealths Ass Attorney to arrest me for

Obstruction of justice. At this point all the defendants are acting under color of law which directly lead to Violation of my 4<sup>th</sup> requiring a warrant for a probable "CRIME" Also, to add insult to injury, ofc. Green and/or ofc. Erickson, violated 18 U.S. Code § 4 – Misprision of felony in that they did not, to the best of my knowledge, report the actions of Ofc. Charles Thomas Jr, thereby denying me equal protection under the 5<sup>th</sup> Amendment which justifies the protection of private information. Social security numbers, and in this context, a drivers license, that's data base includes Social Security numbers. and 14<sup>th</sup> Amendment (Bill of Rights applicable to the states. and state law.) At this point, defendants lose all immunity as actors under Color of Law.

Violations, counts below. 20 counts in total

**COUNT 1 x4** Violation of 42 U.S. Code 1983 Conspiring to deny my 4<sup>th</sup> amendment right of a warrant by a judge.

**Va Code § 18.2-22. Conspiracy to commit felony. & Section 241 of Title 18 USC**

On June 6th 2021 Assistant Commonwealth's Attorney, Tim Boyer, Ofc. Green, Ofc. Erickson and Ofc. Charles Thomas Jr, conspired against me in order to get me to surrender my constitutionally, protected rights. 4<sup>th</sup> amendment requirement of a warrant. This planning, (Gathering to conspire) after I plainly asserted my rights earlier, lead to violating my right to be safe in my home and to be silent. Which later lead to physical and emotional harm. This was a plan to deprive me of my rights (Deprivation of rights) in order to take from me objects and information protected by law stated above. As shown in the first part of my statements of Claim.

Section 241 of Title 18 USC makes it unlawful for two or more persons to agree together to injure, threaten, or intimidate a person in any state, territory or district in the free exercise or enjoyment of any right or privilege secured to him/her by the Constitution or the laws of the Unites States, (or because of his/her having exercised the same). Unlike most conspiracy statutes, Section 241 does not require that one of the conspirators commit an overt act prior to the conspiracy becoming a crime.

**"if such acts include kidnapping"** (Va. Code Ann. § 18.2-47, uses the terms abduction and kidnapping synonymously) "they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death."

Va Code § 18.2-22. (a) If any person shall conspire, confederate or combine with another, either within or outside the Commonwealth, to commit a felony within the Commonwealth, or if he shall so conspire, confederate or combine with another within the Commonwealth to commit a felony either within or outside the Commonwealth, he shall be guilty of a felony that shall be punishable as follows: (1) Every person who so conspires to commit an offense that is punishable as a Class 1 felony is guilty of a Class 3 felony; **Class 3 Felony**

A Class 3 felony in Virginia is punished with 5 years up to 20 years in prison and a fine up to \$100,000.

**Every act, before and after the unlawful entry of my home, is an UNLAWFUL act by the above named defendants.**

**COUNT 2 x1** Violation of 42 U.S. Code 1983 Trespass without a 4<sup>th</sup> amendment warrant to induce fear and intimidation forcing me to change my location from one of private to semi private where a warrant would possible be no longer needed.



Va Code § 18.2-282. **Pointing, holding, or brandishing firearm**, air or gas operated weapon or object similar in appearance to, “reasonably induce fear in the mind of another”.

Officer Charles Thomas Jr, kicked open my door with gun drawn to achieve by force and threat, to coerce obedience and compliance for me to surrender the safety of my constitutionally protected home. Dragging me out of my private home into a semi public breeze way. Removing me from a private place that would require a warrant. to a semi public place where I might be subject to a possible resisting arrest and or obstruction of law charge. Under threat of bodily harm with a fire arm, I was forced to surrender my right to exercise my right to be secure in my home and be silent. This is another act (Count) of Deprivation of rights causing shocking anxiety and fear and later leading to and contributing to, pain and suffering. And a lose of faith in my local police.

A. It shall be unlawful for any person to point, hold or brandish any firearm or any air or gas operated weapon or any object similar in appearance, whether capable of being fired or not, in such manner as to reasonably induce fear in the mind of another

**COUNT 3 x1** Violation of 42 U.S. Code 1983 4<sup>th</sup> amendment . Unlawfully entering my property to interfere with my rights.

Va Code § 18.2-121. **Entering property of another for purpose of damaging it, etc.** “or in any manner to interfere with the rights of the owner, user, or occupant” thereof to use such property free from interference.

Ofc. Charles Thomas Jr Unlawfully entered my home to deny me the protections that it affords me under the 4<sup>th</sup> amendment. Extracted me from the safety of my home and would not let me enter saying, “You are not going back in there”, protected by 4<sup>th</sup> amendment and placed me in a semi public place where I no longer have the protection of the requirement of a 4<sup>th</sup> amendment warrant. Leading to and contributing to, pain and suffering, further escalating conflict along with heightening my fear and Anxiety

**COUNT 4 x1** Violation of 42 U.S. Code 1983. 4<sup>th</sup> and 5<sup>th</sup> amendments violations any force, let along excessive force, and due process.

Va Code § 18.2-57 **Assault and battery**. A. “Any person who commits a simple assault or assault and battery shall be guilty of a Class 1 misdemeanour”. Assault is an intentional, offensive, or harmful act that may cause reasonable anxiety or fear of expected injury. It includes intimidation by non-physical acts that cause fear in another person.

Ofc. Charles Thomas Jr made an assault on my home and my person by kicking in the door, with his gun drawn at the ready, grabbing my arm and pulling me out. No warrant, no emergency, no exigent circumstances and no hot pursuit. But simply to serve a civil complaint/order. This is an unlawful act under color of law. Causing me pain and suffering.

**COUNT 5 x1** Violation of 42 U.S. Code 1983. The U.S. And State constitutions guarantees me “freedom of movement”. This was violated by blocking my access to my apartment. At no time was I told I was being detained and this act was committed before I was falsely arrested.

Va Code § 18.2-404. **Obstructing free passage of others.**

Any person or persons who in any public place or on any private property open to the public

unreasonably or unnecessarily obstructs the free passage of other persons to and from or within such place or property and who shall fail or refuse to cease such obstruction or move on when requested to do so by the owner or lessee or agent or employee of such owner or lessee or by a duly authorized law-enforcement officer shall be guilty of a Class 1 misdemeanor.

Ofc. Charles Thomas Jr blocked my path to the protection of my leased property thereby denying me the protection of the 4<sup>th</sup> amendment and my right of movement. Extracted me from the safety of my home and would not let me enter saying, "You are not going back in there"

**COUNT 6 x1** Violation of 42 U.S. Code 1983 Abuse and knowingly violating my rights under the 4<sup>th</sup> and 5<sup>th</sup> amendments. Actions to instil fear in an attempt to get me to surrender my rights.

Va Code § 18.2-57 **Assault and Battery** (second count)

Battery with Malicious Intent/Conduct (Blacks Law, Malice: "malice is a condition of the mind which shows a heart regardless of social duty and fatally bent on mischief, the existence of which is inferred from acts committed or words spoken." Harris v. State, 8 Tex. App. 109.) battery is an intentional contact of another person physically, in an "offensive" or harmful manner without their consent, justification, or legal basis.

Ofc. Charles Thomas Jr, under color of law, after dragging me from my constitutionally protected environment, attacked me a second time by slapping papers out of my hands while my hands were behind my back with no threat to him. Totally outrageous, unnecessary, unlawful and combined with His above acts and speech (replacing you have the right to remain silent with "YOU HAVE NO RIGHTS") after I asserted my rights, shows absolute malice. These and other words show officers had a knowing intent to ignore my rights and move forward with their attack. This is a violation of the 5<sup>th</sup> amendment protection of due process of law which deprived me of liberty.

Miller v. US (5th Circuit) 230 F. 2d. 486 (1956) "The claim and exercise of a constitutional right cannot thus be converted into a crime"

**COUNT 7 x4** Violation of 42 U.S. Code 1983. **illegal holding and transporting me without consent and against my will** is a violation of my 5<sup>th</sup> amendment right to liberty, freedom of movement.

Va Code §18.2-47. **Abduction and kidnapping.** A. Any person who, by force, intimidation or deception, and without legal justification or excuse, seizes, takes, transports, detains or secretes another person with the intent to deprive such other person of his personal liberty or to withhold or conceal him from any person, authority or institution lawfully entitled to his charge, shall be deemed guilty of "abduction."

( *When officers act outside of the law, they lose their cloak of immunity* ) ( *Davis v. Wechsler, 263 US 22, 24. "Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them."* ) The terms "abduction" and "kidnapping" shall be synonymous in this Code. Abduction for which no punishment is otherwise prescribed shall be punished as a Class 5 felony. (" by force, intimidation or deception, and without legal justification")

When officers act outside of the law, they lose their cloak of immunity. By instruction from Assistant Commonwealth's Attorney Tim Boyer, Ofc. Green, Ofc. Erickson, and Ofc. Charles Thomas Jr (shown in body cam footage, trespassing, assaulting and battering me) took me by force, intimidation and deception, without legal justification, and imprisoned me. Kept me imprisoned, in hand cuffs and leg irons, in jail. Only on the condition that I surrender my constitutional rights to papers and effects, would they release me. Taking me by force, intimidation and deception. Force, hand cuffed.

Intimidation threats by officer Erickson of further charges, and deception by Officer Thomas as to my having no rights. And Erickson at the police station said( "All this for what?) Suggesting I was responsible for the unnecessary escalation calling me derogatory names ("what a dick"). Simply because I know my rights and use them. While they could have chosen to go before a judge and try for a warrant, instead they chose to view my claim and exercise of a constitutional right as Contempt of Cop. Therefore intent on revenge and to do me harm by way of the Justice system. Having to go through this without a lawyer, is physically and emotionally painful for me at 61years old and disabled. Having to learn all I can to have this not thrown out of court because the state has unlimited taxpayer funds and years of legal experience and knowledge, while I am, although a student of law history, a high school dropout with learning difficulties being Dyslexic. I would rather be fishing. But like so many other ex-servicemen, I took the same oath to defend the Constitution. Having made phone calls to complain about what happened to the police department numerous times with not call backs. Visiting the police department several times only to be told there was no one there to help me. Finally weeks later meeting with one person and days later the Cheif telling me he would look into it, but no calls to come in, to be interviewed. And then sending by registered mail, a signed complaint and notice of felony by police officers and the Commonwealths Attorney. I decided I did all I could do and the only thing left was to go to court under tittle 42 1983. And having been told by lawyers that they will not take a case against someone they have to work with on a daily basis, plea bargaining etc., the Commonwealths Attorney. And others only offering to decide if they will take the case after paying a \$100 dollar fee just to be told no. I realized that this type of case, 42 U.S.1983 was the last resort to not only obtain justice, but more importantly to give the city and all involved a good slap in the head to realize that this de-facto practice of arresting people for Pseudo obstruction of justice needs to stop

**COUNT 8 x1 Violation of 42 U.S. Code 1983. 4<sup>th</sup> amendment violation searching my person and taking my property outside at the police car.**

**Va Code § 19.2-59. Search without warrant prohibited;** when search without warrant lawful. No officer of the law or any other person shall search any place, thing or person, except by virtue of and under a warrant issued by a proper officer. Any officer or other person searching any place, thing or person otherwise than by virtue of and under a search warrant, shall be guilty of malfeasance in office. Any officer or person violating the provisions of this section shall be liable to any person aggrieved thereby in both compensatory and punitive damages.

Officer Erickson, with assistance from Ofc. Charles Thomas Jr, unlawfully, searched my person outside at the patrol car and took my property. Officer Erickson ordered me to enter the car. At that point I informed officer Erickson that I was disabled and needed help getting into the very confined space. He then grabbed my pants leg and used his shoulder to shove me into the car injuring my shoulder, back and chest. Disabled, 61 years old. I told him I was disabled and he mocked me ignoring my need for care. This act cause injury.

**COUNT 9 x2 Violation of 42 U.S. Code 1983. 5<sup>th</sup> and 14<sup>th</sup> amendment denial of rights, "equal protection of the laws"** If officers Erickson and Green witnessed someone on the street or any place else, doing to another citizen, or non-citizen for that matter, what Officer Thomas did to me, (Kicking in my door and dragging me out") they would be bound by duty to intervene and not only stop the abuse but to bring charges and arrest that person. I was treated as a "Class of One" as in *Olech v. Village of Willowbrook*, 528 U.S.562 (2000) intentionally treated differently than others.

**§18 U.S. Code § 4 - Misprision of felony. Whoever, having knowledge of the actual commission of**

**a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.**

**14<sup>th</sup> Amendment Section 1.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; **nor deny to any person within its jurisdiction the equal protection of the laws.**

Not only did Officers Ericsson and Green fail to protect me from the abuse of the Ofc. Charles Thomas Jr, in the body cam footage, but also failed/chose not to, report the same. Nor is there any mention of Ofc. Charles Thomas Jr, in the police report.

**COUNT 10x 4** Violation of 42 U.S. Code 1983 Acting out and completing a planned **Conspiracy to deny me my constitutionally protected rights under the 4<sup>th</sup>, 5<sup>th</sup> and 14<sup>th</sup> amendment resulting in damages to me, the plaintiff. Striped of my rights under color of law, abducted and placed in building with locked doors and bars making it impossible for me to leave.** violation of my 5<sup>th</sup> amendment right to liberty, freedom of movement in a successful attempt to take my personal papers/information. Social security number. Now that number is in the police report making it open to the public, ripe for thief.

Persons acting under color of law include police officers, prisons guards and other law enforcement officials, and prosecutors. As in *Burns v. Reed*, 500 U.S. 478 (1991) "prosecutors who act in investigative capacity are NOT immune". \*\*Out of court activities, such as participation in search warrant or giving advice to police are NOT protected by immunity.\*\*

The very basics of our laws are taught to school children. Required teaching in police training, and law school. The Constitution and the bill of "RIGHTS" is the very foundation of the our laws and it's limits. There can be no excuse for a police officer to think they don't need a warrant to enter the private residence and pull me out, when there is no hot pursuit, no emergency, no crime witnessed, no probable cause or any other lawful reason to do so.

And even more so, there is no excuse for a trained, experienced attorney, with more then a decade of experience, now the Assistant Commonwealth's District Attorney.

**On June 6th 2021 Assistant Commonwealth's Attorney, Tim Boyer, ofc. Green, ofc. Erickson and ofc. Charles Thomas Jr, conspired against me in order to get me to surrender my constitutionally, protected rights. I was Trespassed upon, Threatened with a firearm, Assaulted, Battered, Abducted, searched without a warrant, and then Falsely Imprisoned. Also, to add insult to injury, ofc. Green and/or ofc. Erickson, violated 18 U.S. Code § 4 – Misprision of felony in that they did not, to the best of my knowledge, report the actions of Ofc. Charles Thomas Jr, thereby denying me equal protection under the 5<sup>th</sup> and 14<sup>th</sup> Amendment. Each and every action taken by the police officers, and the ratification of de-facto local police policy by a superior, Tim Boyd led to all caused all the damages to me.**

Relief Sought



Plaintiff has/is suffering Pain, Anguish, Anxiety, Humiliation and Stress due to the actions and inactions of the defendants. Continued emotion stress and fear of retaliation, looking over my shoulder while driving to avoid any contact with police. On going medical expenses. And am having to mover out of this jurisdiction to live peacefully without fear of retaliation. Through my fail search to find an attorney to take this case, some lawyers have told me they are not willing to sue Tim Boyd, The Commonwealths Attorney because they have to work and do deals with him all to often. I cannot live in a jurisdiction where the police believe they can act the way they did and a Prosecuting attorney would be out to get me. If local Lawyers are afraid of him, so should I be.

1. Damages against the defendants in an amount to be determined at trial which will fairly and reasonably compensate the plaintiff for all damages to be accounted at trial.
2. Punitive damages against the defendants in the amount of \$350,000. for each COUNT, under 42 U.S. Code 1983 (\$350,000 X 20 counts = seven million dollars) As punishment and to force defendants to stop their de facto policy of using "Obstruction of Justice" as a catch all for people who understand their Bill of Rights and who's claim of said rights are viewed by the Commonwealth Attorney and Bristol City Police as "Contempt of Cop".
3. And an investigation in to the relationship between Misty Thomas, paid drug informant who filed for an emergency protective order but going no farther. (later apologizing to me for doing so) and Officer Charles Thomas who kicked in my door, treated me with malice and as the main actor in this event not mentioned at all in the police report, but can been seen in the police body cam, as the main antagonist.
4. A city plan and placement for an independent company to teach the Constitution with a focus on 4<sup>th</sup> amendment rights, to Bristol City Police officers. While there can be no excuse for anyone who takes the oath to defend the constitution, I believe police officers may have been and/or wanted to be, misled by the Commonwealths Attorney and maybe others in higher government office that, "Obstruction of Justice" is a catch all for people asserting their rights.

and

3.All reasonable fees and costs, office, services, attorneys, etc.

Plaintiff petitions for a jury trail

Sincerely



Tony McKenna (Not Pro Se) but as a plain natural person with a GED education. Without legal knowledge.

Tony McKenna,  
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(Now 249 New Haven LN. Apt 205) Ph# 276-494-0477